

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	
)	Chapter 11
)	
SEARS HOLDINGS CORPORATION., <i>et al.</i> , ¹)	Case No. 18-23538 (SHL)
)	
Debtors.)	(Jointly Administered)
)	

**STIPULATION AND ORDER BY AND BETWEEN
THE DEBTORS AND TRANSFORM HOLDCO LLC
REGARDING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN
EXECUTORY CONTRACTS WITH ASG TECHNOLOGIES GROUP, INC.**

This Stipulation and Order (the “**Stipulation and Order**”) is made as of October 7, by and between the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) and Transform Holdco LLC (“**Buyer**” and together with the Debtors, the “**Parties**”) through their respective and duly authorized counsel of record.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); SR – Rover de Puerto Rico, LLC (f/k/a Sears, Roebuck de Puerto Rico, Inc.) (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Rover Business Unit, LLC (f/k/a Sears Brands Business Unit Corporation) (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors’ corporate headquarters is c/o M-III Partners, LP, 1700 Broadway, 19th Floor, New York, NY 10019.

Recitals

A. On October 15, 2018, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the Southern District of New York (the “**Court**”).

B. On February 8, 2019, the *Order (I) Approving the Asset Purchase Agreement Among Sellers and Buyer, (II) Authorizing the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Leases in Connection Therewith, and (IV) Granting Related Relief* (ECF No. 2507) was entered by the Court (the “**Sale Order**”), approving the sale of substantially all of the Debtors’ assets to Buyer.² The sale closed on February 11, 2019 (the “**Closing Date**”).

C. On April 2, 2019, the Court entered the *Order (I) Authorizing Assumption and Assignment of Certain Executory Contracts and Leases and (II) Granting Related Relief* (the “**Assumption and Assignment Order**”) (ECF No. 3008) which set forth the procedures for Buyer to designate additional agreements for assumption and assignment or rejection.

D. On April 17, 2019, the Debtors filed the *Notice of Rejection of Executory Contracts* (ECF No. 3268) (the “**Rejection Notice**”) which inadvertently listed a Master Software and Services Agreement and certain amendments and schedules thereto with Allen Systems Group, now doing business as ASG Technologies Group, Inc., at line items 199 to 202 (collectively, the “**MSSA**”).

² Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Sale Order.

E. On May 8, 2019, the Court entered the *Order Approving the Rejection of Certain Executory Contracts* (ECF No. 3755) (the “**Rejection Order**”), which included the MSSA at line items 198 to 201 due to the inadvertent inclusion of the MSSA in the Rejection Notice.

F. Notwithstanding its notice to the Debtors and the Rejection Notice, the Parties have agreed to have the Debtors assume and assign the MSSA to Buyer’s affiliate, Transform SR Holding Management LLC, in accordance with that certain settlement agreement (“**Settlement Agreement**”) approved by the Court. *See Order Approving Joint Motion of Debtors and Official Committee of Unsecured Creditors for Entry of an Order Approving Settlement Agreements, Granting Related Relief and Authorizing Certain Nonmaterial Plan Modifications in Furtherance of the Effective Date of the Plan* (ECF No. 10629); *Joint Motion of Debtors and Official Committee of Unsecured Creditors for Entry of an Order Approving Settlement Agreements, Granting Related Relief and Authorizing Certain Nonmaterial Plan Modifications in Furtherance of the Effective Date of the Plan* (ECF No. 10566), Ex. A (Ex. 9 of the Settlement Agreement).

**IT IS THEREFORE AGREED, AND UPON BANKRUPTCY COURT APPROVAL
HEREOF, IT SHALL BE ORDERED AS FOLLOWS:**

1. Notwithstanding that the MSSA was inadvertently listed in the Rejection Notice and Rejection Order, as of the date of entry of this Stipulation and Order by this Court (the “**Effective Date**”), the MSSA and all amendments and schedules thereto are assumed and assigned to Buyer’s affiliate, Transform SR Holding Management LLC, pursuant to and in accordance with this Stipulation and Order, the Settlement Agreement, and section 365 of the Bankruptcy Code *nunc pro tunc* to the Closing Date.

2. No amounts are owed under the MSSA through the Closing Date, and accordingly, no amounts are required to be paid as cure pursuant to Section 365(b) of the Bankruptcy Code.

3. Upon the Effective Date, in accordance with Section 365(k) of the Bankruptcy Code, the Debtors shall be relieved from any further liability with respect to the MSSA.

4. Upon the Effective Date, this Stipulation and Order shall be deemed effective and in full force and effect *nunc pro tunc* to the Closing Date.

5. This Stipulation and Order shall inure to the benefit of, and shall be binding upon, the Parties, their successors, and assigns, as applicable.

6. Each of the undersigned who executes this Stipulation and Order by or on behalf of a Party represents and warrants that he or she has been duly authorized and empowered to execute and deliver this Stipulation and Order on behalf of such Party.

7. This Stipulation and Order may be executed in one or more counterparts, which collectively shall form one and the same agreement. Any of the Parties may execute this Stipulation and Order by signing any such counterpart and each of such counterparts (whether an original or a copy) shall for all purposes be deemed an original.

8. This Stipulation and Order shall not be modified, altered, amended, or vacated without the written consent of all Parties hereto or by further order of the Court.

9. Pending entry of this Stipulation and Order by the Court, the Parties shall not take actions inconsistent with the provisions of this Stipulation and Order. In the event that this Stipulation and Order is not approved by the Court or is not executed by the Parties, (a) nothing herein shall be used against any of the Parties hereto for any reason and (b) the obligations of the Parties under this Stipulation and Order shall be null and void and, with the exception of this paragraph, the Parties' respective rights and obligations under applicable law shall remain unaffected by this Stipulation and Order.

10. The Court shall have jurisdiction over any action or proceeding arising out of, or relating to, this Stipulation and Order.

[Signature Page Follows]

Dated: October 7, 2022

By: /s/ Garrett A. Fail
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SO ORDERED

Dated: October 18, 2022
White Plains, New York

/s/ Sean H. Lane
THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE